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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44714
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2016-3079
)	
TYLER CLIFF KNARR,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Knarr failed to establish that the district court abused its discretion by imposing a unified sentence of 20 years, with 12 years fixed, upon his guilty plea to trafficking in heroin, with a second trafficking offense enhancement?

Knarr Has Failed To Establish That The District Court Abused Its Sentencing Discretion

On February 2, 2016, an undercover detective made arrangements to meet with Audri Foster and Caven King, from whom he had previously purchased heroin during

controlled buys, to purchase nine grams of heroin for \$1,800.00. (PSI, p.82.¹) Foster told the detective that they “would need about an hour to go pick it up.” (PSI, p.82.) The surveillance team subsequently observed King drive to Knarr’s residence to pick up the heroin, then return to Foster’s residence, where King and Foster weighed and packaged nine grams of heroin and sold it to the undercover detective for the agreed-upon amount. (PSI, pp.83-84, 112.)

DEA agents later accompanied Knarr’s parole officer to Knarr’s residence and, upon searching the residence, they located approximately five grams of heroin, a digital scale with brown residue, spoons, several syringes, a “small amount” of marijuana, and \$4,360.00 in cash. (PSI, pp.113-16.) DEA agents also found “numerous text-message conversations about buying and selling heroin in [Knarr’s] phone,” and an officer’s drug detecting K-9 alerted to the \$4,360.00 of cash “after [the cash] had been placed in a clean area of the house.” (PSI, pp.114-15.) Knarr admitted that “he had been selling and using heroin for some time,” that he had recently sold heroin to several individuals, and that he was “a heroin source of supply to Caven King, Audri Foster, and others.” (PSI, pp.111-13.)

The state charged Knarr with conspiracy to traffic in heroin (in excess of 28 grams), trafficking in heroin (two or more grams, but less than seven grams), and possession of drug paraphernalia. (R., pp.92-94.) The state also filed an Information Part II, charging Knarr with having committed a second trafficking offense. (R., pp.104-

¹ PSI page numbers correspond with the page numbers of the electronic file “Knarr 44714 psi.pdf.”

05.) Pursuant to a plea agreement, Knarr pled guilty to trafficking in heroin (two or more grams, but less than seven grams), with a second trafficking offense enhancement, and the state dismissed the remaining charges. (R., p.103.) The district court imposed a unified sentence of 20 years, with 12 years fixed. (R., pp.116-19.) Knarr filed a notice of appeal timely from the judgment of conviction. (R., pp.127-30.)

Knarr asserts his sentence is excessive in light of his substance abuse, claim that he is “committed to make the necessary changes,” and purported remorse and acceptance of responsibility. (Appellant’s brief, pp.3-5.) The record supports the sentence imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its

discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The penalty for trafficking in heroin (two or more grams, but less than seven grams), with a second trafficking offense enhancement, is a mandatory minimum of six years, up to life in prison. I.C. §§ 37-2732B(a)(6), -2732B(a)(7). The district court imposed a unified sentence of 20 years, with 12 years fixed, which falls well within the statutory guidelines. (R., pp.116-19.)

On appeal, Knarr contends that he “has taken responsibility for his actions” in the instant offense. (Appellant’s brief, p.5.) However, although Knarr initially admitted to DEA agents that he had been selling heroin “for some time” and that he was “a heroin source of supply to Caven King, Audri Foster, and others,” he later (during his presentence interview) denied selling heroin to King or Foster; a denial that he appears to have maintained throughout the sentencing hearing. (PSI, pp.5, 22, 111-13; Tr., p.32, L.21 – p.36, L.9.) As such, it is clear that Knarr was not accepting full responsibility – either during his presentence interview or at the time of sentencing – for his actions in the instant offense.

With respect to Knarr’s substance abuse, purported remorse, and claim that he is committed to making changes, Knarr has previously made the same assertions many

times, and yet has failed to make any rehabilitative progress and has repeatedly resumed the same criminal behavior. (PSI, pp.10-11, 17, 71-74, 157, 162-63, 172-73, 221-23, 234, 240, 252, 257-58, 263-64, 267, 280.) He has been committing drug- and alcohol-related offenses since 2001, was adjudicated for or convicted of at least 14 such offenses between the ages of 14 and 29, and also admitted that he produced alcohol and “intravenously injected meth and heroin for a year” during a prior six-year prison term. (PSI, pp.6-11, 162, 164.) Knarr has previously participated in a plethora of treatment programs, including the Lifeline Therapeutic Community Program (while in prison), TC Aftercare, a rider at NICI (where he completed the “A New Direction” substance abuse program), Community Services Counseling, AA/NA, the Ada County Drug Court program, the Juvenile Drug Court program, substance abuse treatment while on juvenile probation, the Idaho Youth Ranch and Aftercare program, the SAS/EDI Residential program, “other outpatient and aftercare programs,” and a detox program at Allumbaugh House; however, he was frequently terminated from and/or failed to follow through with treatment. (PSI, pp.11, 17, 71-74, 161, 222-23, 228, 231, 237-39, 259, 277.) As stated by the presentence investigator, Knarr’s known criminal history dates back 16 years and “is fraught with drug related offenses that no amount of prison-based treatment or community-based treatment seem to have any impact in mitigating his drug abuse and criminal conduct.” (PSI, p.22.)

At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Knarr's sentence. (Tr., p.38, L.15 – p.40, L.12.) The state submits that Knarr has failed to establish an abuse of

discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Knarr's conviction and sentence.

DATED this 18th day of May, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of May, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p style="text-align: center;">37</p> <p>1 through the pathway they choose for him in six 2 years.</p> <p>3 So, again, Judge, I'd ask the Court to 4 consider some of those options. He is a 5 relatively young guy. Like I said, he's got some 6 support. He's got some pretty good job skills. 7 And I've seen his tax returns because there's a 8 civil issue pending and in 2015 he made \$38,000 as 9 a welder. So he's got some skills. He just needs 10 to obviously be careful about who he's hanging out 11 with, get his addictions under control and 12 certainly quit hurting himself and his family and 13 society by dealing drugs and hopefully he can turn 14 this around.</p> <p>15 So, again, I would ask the court to 16 consider some of those options. Thank you.</p> <p>17 THE COURT: Thank you.</p> <p>18 Mr. Knarr, is there anything you want 19 to tell me before I decide what sentence to 20 impose?</p> <p>21 THE DEFENDANT: Yes, sir. I'd just like to 22 say I'm not trying to dodge responsibility or 23 anything, but I am sorry about all of this. I 24 mean, it pains me to see these young people go to 25 prison, too. I wish I really had never got</p>	<p style="text-align: center;">38</p> <p>1 involved in heroin. It really grabbed me. 2 That's all, Your Honor. Thank you.</p> <p>3 THE COURT: Is there any legal cause why 4 judgment can't be entered?</p> <p>5 MS. REILLY: Unknown to the State, Your 6 Honor.</p> <p>7 MR. LEWIS: No, Judge. I apologize for 8 prolonging this. There is one thing I forgot to 9 mention. The records that I gave you are fairly 10 important for another reason. One of the deals 11 was conducted on February 2nd of 2016. My client 12 was in rehab during that particular buy and that's 13 another nine grams and another \$1,800. So that 14 was part of what I'd denote to Your Honor as well.</p> <p>15 THE COURT: Based on your pleas of guilty, 16 Mr. Knarr, I'll find you guilty both of the 17 trafficking in heroin charge and the persistent 18 violator.</p> <p>19 As I've been trying to sort what the 20 appropriate sentence is in your case and 21 considering those Toohill factors; protecting 22 society, rehabilitation, deterrence and 23 punishment, I'm reminded that part of the 24 calculation in sentencing is the crime and a part 25 of the calculation is the defendant. You present</p>
<p style="text-align: center;">39</p> <p>1 a significantly different picture personally than 2 Ms. Perkins did with respect to history. Your 3 crimes, it seems to me, are simply serious and I'm 4 left with the impression after reviewing the 5 presentence investigation and the police reports, 6 that to some extent you got lucky that you didn't 7 have the requisite amount of heroin on your person 8 at the time that the search was conducted because 9 it appears to me that it is more likely than not 10 that you were the source certainly for Mr. King 11 and likely for Ms. Perkins.</p> <p>12 I have a difficult time justifying a 13 sentence that would depreciate the seriousness of 14 that offense particularly in light of your 15 criminal history. Another trafficking just a 16 couple of years ago and manufacturing in 2014. 17 And you don't limit your criminal conduct to 18 substance abuse. You have theft offenses, 19 burglary, DUIs. And all of those things are 20 accumulated in the context of the State providing 21 every service that it can think of to try and 22 support you making different choices. It appears 23 to me that it no longer matters what services we 24 provide, you are still likely, extremely likely, 25 to reoffend and when you reoffend you're going to</p>	<p style="text-align: center;">40</p> <p>1 engage in conduct that puts the rest of the 2 community at risk.</p> <p>3 My sense is there needs to be a 4 component that address clearly the protection of 5 society, but also specific deterrence to keep you 6 from doing that sort of thing.</p> <p>7 To that end I'm going to impose an 8 aggregate term of 20 years in custody in the 9 Department of Correction with a fixed minimum term 10 of 12 years followed by an indeterminate term of 11 eight years. In addition to that I'll impose a 12 \$10,000 fine.</p> <p>13 That would be the judgment of the 14 Court. Do you have any questions about the 15 judgment?</p> <p>16 THE DEFENDANT: No, Your Honor.</p> <p>17 THE COURT: Mr. Knarr, you have the right to 18 appeal this judgment. You have 42 days in which 19 to take that appeal from the date judgment is 20 filed and entered. You have the right to be 21 represented by an appeal in pursuing the appeal. 22 If cannot afford an attorney, one will be 23 appointed for you at public expense. Also, the 24 payment of costs will be at public expense.</p> <p>25 MS. REILLY: And, Judge, the State is</p>